been adjudicated by a court, and an attempt is made to litigate it again, that the party relying upon such adjudication, should be permitted to show, by averment and proof, that the question proposed to be tried, has been already tried and decided by a competent tribunal. In the case of *Janett* vs. *Johnson*, 11 *Gill & Johns.*, 173, the Court of Appeals say, "it appears to be a principle of law, well established, that to make a record evidence to conclude any matter, it should appear by the record, *or by other proof*, that the matter was in issue, and decided in that suit." In that case there was no question made, that the identity of the thing involved in the latter suit, might be shown by evidence out of the record, to have been involved and decided in the former suit, and the record of the first action was not regarded as a bar to the second, because the evidence in the second suit did not show that the matters involved in it, had been raised and decided in the former.

But, although I think, that it is competent to this complainant to show by evidence, that the title to these negroes, as derived by the parties from Josiah and Jesse Hughes, was put in issue, and decided in the case at law, and that from the time of the institution of that action, the verdict and judgment is conclusive between them, yet, I am not of opinion, that the effect of that recovery is by retroaction, to be considered as concluding the parties from all examination into the title, from the death of Josiah Hughes in 1821.

Certainly, so far as the negro Isaac is concerned, it cannot be denied, that there is much doubt as to who had him in possession at that time, and for some time before, and there are unquestionably strong grounds for believing that Jesse Hughes, down to the period of his death, in the year 1838, claimed and held him as his property. Now, the action of detinue proceeds on the ground of property in the plaintiff, *at the time of action brought*, and, therefore, the recovery at law in that action, proves no more than that, at the time of its institution, to wit, the 29th of April, 1839, the right of property, either absolute or special, was in the plaintiff. It certainly does not prove, that the right to the possession and enjoyment of the property was in